

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:23-cv-00154

James Anthony Hunter,
Plaintiff,

v.

Officer Boller et al.,
Defendants.

O R D E R

Plaintiff James Anthony Hunter, an inmate of the Smith County Jail proceeding pro se, filed this civil action complaining of alleged deprivations of his constitutional rights. The case was referred to United States Magistrate Judge K. Nicole Mitchell. Doc. 3.

Plaintiff complains of two alleged uses of force, on November 18, 2022, by Officers Mitchell and Taylor and on January 17, 2023, by Officer Boller. He also complains of the medical care he received from Dr. Gary White, and sues Sheriff Larry Smith, Turn Key Medical, and Smith County for their alleged roles in his claims.

After review of plaintiff's amended complaint (Doc. 9), which is the operative pleading in the case, the magistrate judge issued a report recommending dismissal of all the claims other than the two alleged uses of force. Doc. 11. The magistrate judge also recommended dismissal of all defendants other than Officers Mitchell, Taylor, and Boller. *Id.* Plaintiff filed objections to the magistrate judge's report. Doc. 18.

The court reviews the objected-to portions of the magistrate judge's report and recommendation de novo. *See Fed. R. Civ. P. 72; 28 U.S.C. § 636(b)(1).*

In his objections, plaintiff contends that Sheriff Smith is the policy-maker for Smith County. *Id.* at 2. He says that training guidelines were not updated and laws were disobeyed, and that he is forced to be in contact with the officers who assaulted him. *Id.* Plaintiff says that his grievances were denied and that the jailers were not properly trained. *Id.*

Plaintiff argues that he was denied medical care and that Dr. White did not follow up with him after plaintiff received X-rays. *Id.* at 3. He acknowledges that he was later seen by a neurosurgeon at Mother Frances Hospital in Tyler but says that Dr. White allowed the medical staff to tell him that he was only suffering from old age, although he was later told that he had arthritis. *Id.* The neurosurgeon had a social worker contact Turn Key Health. *Id.*

The magistrate judge correctly determined that plaintiff's claims concerning Sheriff Smith and Smith County were wholly conclusory and did not state a claim upon which relief may be granted. Doc. 11 at 6. Plaintiff's conclusory objections do not controvert the magistrate judge's determination. *See Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5th Cir. 2005).

Plaintiff maintained in his complaint that Dr. White improperly diagnosed and treated him and that the doctor could have prescribed better alternatives in the form of pain management and treatments. The magistrate judge concluded that plaintiff complained of negligence and medical malpractice and voiced disagreement with the treatment he received, none of which amounts to a constitutional violation. Doc. 11 at 9; *Stewart v. Murphy*, 174 F.3d 530, 534 (5th Cir. 1999).

Plaintiff's objections acknowledge that he received X-rays and a visit with a neurosurgeon at a hospital. He furnished documents with his original complaint showing that he was seen in Mother Frances Hospital on February 27, 2023 for a pre-operative evaluation and had surgery on March 8, 2023. Doc. 1 at 47. Although plaintiff complains of the quality of the medical care he received, he has failed to plead a viable claim of deliberate indifference to his serious medical needs. The magistrate judge correctly

recommended dismissal of all of the claims except for the use of force claims against Officers Mitchell, Taylor, and Boller.

Having reviewed the magistrate judge's report and plaintiff's objections de novo, the court overrules plaintiff's objections and accepts the findings and recommendations of the magistrate judge's report. It is accordingly ordered that all of plaintiff's claims except for his claims concerning alleged uses of force by Officers Mitchell and Taylor on November 18, 2022, and by Officer Boller on January 17, 2023, are dismissed without prejudice for failure to state a claim upon which relief may be granted. All defendants other than Mitchell, Taylor, and Boller are dismissed as parties to this lawsuit.

So ordered by the court on June 21, 2024.



J. CAMPBELL BARKER
United States District Judge